

Revised practice for examination of sound marks

Registration

Hong Kong - Rebecca Lo & Co

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The Trademarks Registry of Hong Kong has revised its Work Manual on applications for and examination of sound marks.

Under the Hong Kong Trademarks Ordinance, a 'trademark' is defined as "any sign which is capable of distinguishing the goods and services of one undertaking from those of other undertakings and which is capable of being represented graphically". A sound can be registered as a trademark if it fits this definition, provided that the other requirements for registration (eg, the sound is not devoid of any distinctive character) are met.

Under the current practice, in order to apply for the registration of a sound as a trademark, the representation of the mark submitted by the applicant as a specimen must be such that:

- the mark is certain and easily viewable; and
- the registrar can determine precisely what the sign is from the graphical representation, without the need for supporting samples.

Therefore, audio recordings were not accepted as part of the application, as the mark was examined on the basis of its graphical representation.

Without changing its position that the graphical representation of a sound mark is the sole basis on which registrability will be assessed, the registry now welcomes and encourages the submission of a sound recording if the applicant considers that it will assist in the examination of the application. However, the sound recording will be used by the registry for reference purposes only, and will not be treated as, or form part of, the graphical representation of the sound mark.

Since any sound recording submitted does not form part of the representation of the mark, there can be no amendment to the sound mark or its graphical representation on the basis of a discrepancy between the sound recording and the graphical representation of the sound mark. For the same reason, the sound recording will not form part of the trademark records for search and inspection purposes.

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